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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 1/22/83
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-76 is/are pending in the application.
- ☐ Of the above claim(s) 19, 42, 53 & 63 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-18, 20-41, 43-52, 54-62 & 64-76 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 1-76 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 62
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

Claims 19, 53 and 42, 63 stand are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 9.

Applicant's traversal is persuasive, Thus 54-56 are barrier films to be examined in-group I, no arguments for traversal were offered on species or remaining claims.

Please provide translation for Ref. E 3, and dates for C<sub>6</sub>, C<sub>15</sub>, C<sub>29</sub>, C<sub>31</sub>.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 25, 51, 54, 58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Trademark/Tradenames do not sufficiently identify the material. Generic description is required, as in claim 26.

Claims 1-18, 20-41, 43-49, 57, 64-67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear where support lies for the release rate from the barrier, as "minute amounts" is undefined, and for release from barrier as apposed to from the single polymer (claim 17). In particular, claim 1 is not a sandwich, but only 2 layers. At claim 20, "protective resins" is unclear as to what (claims 21, 22?) protective means. The same issue of polymer vs. barrier release exists.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1, 3-7, 15, 16, 57, 59-62, 68, 74-76 are rejected under 35 U.S.C. 102(b) as being anticipated by Martin et al AU13886/95.

See P. 3, #2 (It was known to apply impregnated termiticide sheets to plastic, polyethylene barrier to provide termiticidal barrier, this is in essence claim 1. Martinet goes further. Multiple Layers of plastic films of polyethylene sheets are impregnated with insecticide (P. 6, line 15-22, P. 8 last paragraph of the instant (claim 49) thickness.

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Insecticides include pyrethrins (p. 9, p. 11) which are released only at a low rate (p. 11, top). No cyhalothrin, or fungicide was used; neither were the barrier layers specified as to the specific functions of claims 20, 50 or 57.

Claims 1, 3-7, 11-16, 57, 59-62, 68, 70-72, 74, 75 are rejected under 35 U.S.C. 102(b) as being anticipated by Morrow et al WO 97/47190.

See P. 6 – a termiticide layer sandwiched (Fig 1, claim 1) between 2 retaining layer (#2) adhesively bonded and rupture resistant is shown. Fungicides are present with the pyrethrins (p.6, last 2 paragraphs). The pesticide matrix is polypropylene (last line, p. 71), the impermeable layer of polyethylene, (claim 7) with UV protestant (claim 8) and rupture resistant (claim 5) and heat sealed (p.6, #2).

Claims 1, 3-6, 11-13, 15-18, 57-61, 68, 70-72, 74 are rejected under 35 U.S.C. 102(b) as being anticipated by Von Kohorn et al 4,639,393.

See Fig 1, 3, and col. 7 insecticide and fungicide impregnated (col. 3, line 15 use col. 14) polymer matrices, are provided, covered with barriers (32) of poly olefins (col. 23, line 13-23). Puncture resistant barrier of (line 15 – 20, col. 14) metal, plastic are envisioned, alumni's, as is a plastic active agent migration preventing (the instant pesticide retaining layer (col. 14, lines 4, 8-63) and an adhesive layer (lines 47-48). Only a minute amount of active is released; it takes years to completely migrate (col. 24, line 21-26). As many layers as are desired may be provided (col. 10, lines 62-67). Control of rate of migration is possible by adding a controlling agent (col. 24, lines 11-21), by adjusting thickness (lines 32-34) or polymer type (lines 32, 33) or amount of

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plasticizer (line 44-55) or flexibility of the polymer film. The rate of migration is below that of the instant invention as claimed claim 17: col. 26 (3) shows Malathion @ .04 micrograms per centimeter squared. The layer include nylon (col. 26, lines 13-15) with a layer thickness of .004 inches of PVC, the instant claim 60 thickness of insertucts include pyrethrins (col. 29, 30) and all ethnic (col. 22) wood boring inserts are controlled (col. 2, lines 30, 31); wasps (also, line 28-31) bark beetles (col. 21, lines 55-59) ants.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18, 20-3<sup>7</sup>, 39-41, 43-52, 54-62, 64<sup>76</sup> are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Kohorn et al 4639393 in view of Zimmerman 5139566 or Iwakawa et al 5902597 Saitoh et al 4747902 and Kodama et al WO 95/22902.

Von Kohorn provides the essence of the instant invention (see above), but does not specify use of the particular polyolefin's of the instant claims; high and low density polyethylene's, or the use of carbon black. Zimmerman (claims 11-13) as does Von Kohorn (col. 22, Pesticides) provides a dispenser with herbicides or other active treating agents (insecticides fungicide – Col. 3, lines 10-13, Zimmerman). Similar to Von Kohorn the barrier release minute actives, for 100 gears (col. 3, lines 50-55) hot melting is invoked (col. 4, lines 30-40), with polyethylene in general, thus inclusive of high and

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low density form (line 16, col. 4), while low density is specified at col. 3, lines 40-43. A multiplicity of layers was not specified, however.

Iwakawa also provide barrier dispenser for long term termite control (col. 2, summary) here the polymers are vinyl copolymers, however (col. 3). Additives include titanium dioxide, colors, plasticizers, carbon blocking (example 1) demonstrating the normal practice of carbon, as filler, with color, with titanium dioxide and carbon black in sufficient amount to provide carrier, filler, color and UV blocking effects, although a Laminated barrier was not discussed. Saitoh is cited to show low density polyethylene retards deterioration of a laminate (col. 3, line 65 – line 4, col. 4). Saitoh shows how to utilize high, low and medium density polyethylene's in a laminate (col. 3), with increased life a function of increased layer (col. 5, lines 13-20) for use inclusive of insecticides and anti fungal a col. 6, top). Finally; Kodama shows the (p. 13, claim 9) equivalence use of the pyrethroid termiticides cylalothrin with allethrin, Permethrin, as used by the instant inventor Von Kohorn Saitoh (col. 4, lines 52-55) Iwakawa (col. 4, line 38-40, 41-44 and 46). None of these aspects of the invention are seen as critical; call are with an the purview of the artisan to provide, in order to optimize functions as desired such as lifetime of efficacy, material costs and availability.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, desiring to utilize fungicide compositions to use an Kohorns to provide pesticide laminate acceptable application over timed is show as known in the art exemplified by Zimmerman, Saitoh, with added features of Iwakawa and Kadammar,

providing control of life span and release rate. Motivation to combine is seen as the general description by Kohorn permitting inclusion of the advantageous specific components polyethylene of high and low density, fillers and UV protectors, carbon black in order to increase duration and provide a suitable pesticide control. The particular pest agent or insecticide to control termites, as considered by secondary references the objective of concern. Claims 54-56 are product claims, as such, source of carbon block or method of producing, not shown to be critical are given no patentable weight.

It has not clearly been established by objective showing of some unobvious and/or unexpected results that the administration of the particular form active, carrier, or the particular provides any greater level of prior art expectation as claimed. Further, applicant has showed no criticality as to the ingredient and concentrations, thus the saranex is included is the polymer known in the art shown by Saitoh. The selection of each ingredient and form thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary nature of each ingredient to optimize the effects desired.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on (703) 308-4628. The fax phone numbers for



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the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.



Levy/LR  
February 21, 2003

NEIL S. LEVY  
PRIMARY EXAMINER